Supreme Court, U.S.
FILED

10-571 AUG 16 2010

Case No: OFFICE OF THE CLERK

In The

Supreme Court of the United States

Harold B. Rotte,
Petitioner-Appellant,

v.

Internal Revenue Service,
U.S. Attorney General,
U.S. Attorney's Office,
United States of America
Respondent-Appellees

On Petitioner for Writ of Certiorari to
The United States Court of Appeals
In the United States Court of Appeals
Eleventh Circuit for the
Southern District of Florida

PETITION FOR WRIT OF CERTIORARI

Harold B. Rotte,Pro Se'
84 Crooked Tree Vero Beach, FL 32962
(772) 538-7180

QUESTIONS PRESENTED

1. Whether the district court erred in allowing the Internal Revenue Service to levy Harold B. Rotte social security in the year 2002 to 2005 for the tax year 1988.

2. Whether any of the district court's failure to rule on all or part constituted an abuse of discretion.

3. Whether the district court erred by ruling the Summary Judgment permitting the Internal Revenue to levy Harold B. Rotte's Social Security after the ten (10) year Statute of Limitations had expired

4. Whether the district court erred in dismissing Harold B. Rotte's case without ruling on two (2) primary issues, the amount the Internal Revenue Services was permitted to deduct an amount higher than the limits by law and permitting the Internal Revenue Service to tax the sale of Harold B. Rotte's homestead property.

5. Did the appeals court err in upholding the dismissal of valid claims, that were before the court

6. Whether the district court abused its discretion when the judge made extrajudicial comments about the case were prejudicial and bias against Harold B. Rotte in failing to hear his arguments.

7. Whether the district court erred in not allowing the wrongful taking of monies by the Internal Revenue Service during years 1984, 1986 and 1987 and failing to require the Internal Revenue Service to apply the overage to the 1988 year.

8. Whether the district court erred in failing to review the entire pertinent discovery presented by Harold B. Rotte, which would have proven his taxes were filed every year and his social security number was fraudulently used by an illegal resident.

9. Whether the Order submitted by the Eleventh District Court of Appeals failed to review the years 1984, 1986 and 1987, that rewarded the IRS instead of refunding the plaintiff

10. Did the appeals court err in not allowing plaintiff to make oral arguments with regards to the false claims the IRS that had been imposed on the plaintiff and the nature of the false claims caused irreparable harm to plaintiff.

11. Did the appeals court fail plaintiff disregarding his multiple request to have a rehearing after the court refused to question the IRS about any of their false claims and the IRS illegal and unreasonable collection actions.

12. Were the lower courts biased in giving more weight to the IRS and showing preferential treatment to the IRS dismissing plaintiff's case without reviewing any evidence presented or permitting plaintiff to give oral statements of the facts.

13. Did the courts err in not addressing the defendant in allowing the defendant to be excluded from the right to petition government from grievance

CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Local Rules, 26.1-1 and 26-1(b), it is hereby certified that the following persons and entities have an interest in the outcome of this case or have participated as attorneys or as judges in the adjudication of this case:

Eric Holder, United States Attorney General, Department of Justice
950 Pennsylvania Avenue, Washington, DC 20044

Richard Farber, Attorney, P.O. Box 502, Washington, DC 20044

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Miami, FL 33132

TABLE OF CONTENTS

Questions Presented.....i

Certificate of Interested Parties
And Corporate Disclosure
Statement.....iv

Table of Contents.....vi

Index of Appendices.....vii

Statement.....1

Reason.....5

Conclusion.....11

INDEX OF APPENDICES

Appendix A	Decision of U.S. Court of Appeals Eleventh Circuit 03/01/2010
Appendix B	U.S. Court of Appeals Eleventh Circuit 05/26/2010 Denying Rehearing
Appendix C	Order of U.S. Court Of Appeals Eleventh Circuit 7/19/2010 Denying Reconsideration of Stay of Mandate
Appendix D	Final Judgment on Summary Judgment from U.S District Court 02/25/2009
Appendix E	Order of U.S. District Court dismissing and denying all pending Motions 03/11/2009
	Letter from The Supreme Court of the U. S. dated September 17, 2010 giving extension of time for Sixty (60) days

STATEMENT

The Plaintiff, Harold B. Rotte was gainfully employed in 1984 by The J.I. Case Corp, a major manufacturer of construction, farm machinery with over Eighteen Thousand (18,000.00) employees the company had been in business for over a hundred years. Plaintiff was in good standing with an impeccable reputation and work record at which time the plaintiff was notified by his employer that the Internal Revenue Service (IRS) was putting a levy on his pay, plaintiff had no prior knowledge of IRS issues. Plaintiff had signed an exclusive employment contract with the company and was questioned as to whether or not plaintiff was working for someone else.

Plaintiff immediately contacted the IRS regarding the alleged unreported income the IRS stated that an illegal resident, had used plaintiff's social security number. The IRS indicated that the plaintiff would have to pay for someone using his social security number and then plaintiff could go through the necessary channels for filing for a refund. The harassment by the IRS continued as the IRS extorted monies from the plaintiff even though the IRS was very much aware the plaintiff did not incur the additional income.

The IRS garnished plaintiff's wages in 1984, 1986, and 1987 in 1988 plaintiff was dismissed from his livelihood of employment, because the company felt

he was in breach of his contract and working for another employer. Plaintiff was asked for an explanation for the tax lien on his pay, plaintiff frivolously tried to have the IRS explain where the false claims of extra income originated, which the IRS failed to provide and plaintiff was unable the refute the IRS charges.

The IRS throughout the years has continued to take monies that were never owed by the plaintiff and the IRS taxed the sale of plaintiff's homestead property, which was a non-taxed sale. The IRS was given proof the sale of the homestead property was exempt but ignored and continued to ignore plaintiff.

Plaintiff always filed his taxes with the IRS and was audited on two separate occasions with different agents. During the audits the agent indicated the plaintiff had unreported income, the same unreported income that the illegal non-citizen took full advantage of the plaintiff's social security number. Plaintiff hired an attorney, which was incompetent and had a conflict of interest as the IRS audit the attorney while under my employ all other attempts to find an attorney have been unsuccessful. Plaintiff did take this valid suit to tax court, the court allowed the IRS to exclude the 1980 and 1982 tax years whereas the IRS made false claims to extort money from plaintiff since those years were the years in dispute Hence the reason for filing originally filing in tax court, which prevented plaintiff the right to face my accusers (IRS) and to

correct his wrong. Plaintiff tried relentlessly to correct the wrong presented by the IRS presenting the necessary evidence and proved the IRS was wrong. The IRS abused their power preventing the plaintiff a review, a hearing or a trial on the discovery and evidence pertinent to the case. The evidence and year in question was for the 1988 tax year. The IRS was only allowed to get the outcome they wanted by obstruction of justice, which deemed unfair to the plaintiff. The IRS continued adding penalties and interest to their incorrect accounting practices, causing undue hardship to the plaintiff. During the 2002 tax year the IRS started by deducting monies from plaintiff's social security benefits, plaintiff's only source of income, this again for the year 1988. The IRS knowing the tricks of the trade got around the law that limits how much monies can be deducted from benefits by their wrong acts. The exorbitant amount of monies taken from plaintiff's social security, almost half, caused undue hardship on plaintiff that forced plaintiff to sell his home and left with little or nothing to live on. Then the IRS wrongly taxed plaintiff on a tax exempt sale of his home at a time plaintiff was consumed with a valid claim against the IRS for over collecting and illegal and unreasonable collection actions. The IRS actions have been vindictive, malicious and harmful.

In the court case all involved the year 1988, the year plaintiff never objected. The validity of plaintiff's appeal to the Eleventh Circuit Court of Appeals, the 1988 tax year was before the Eleventh Circuit Court

on three (3) different occasions. The courts failed hear claims presented by plaintiff whereas the IRS had committed fraud during the tax years 1984, 1986 and 1987 by wrongly taking Ten Thousand Dollars ($10,000.00) for taxes never owed by plaintiff.

Counsel for the IRS has stated previously that the 16th Amendment was to fund the government; the 16th Amendment does not permit the IRS to take monies from an American Citizen (plaintiff) to pay taxes after a person fraudulently used plaintiff's social security number. This forced the plaintiff to pay monies he never earned and allowed the IRS to receive undue enrichment from plaintiff.

Plaintiff dealt with the IRS, in person, in writing causing plaintiff to file a complaint with the Department of Justice. Plaintiff filed a complaint with the Federal Bureau of Investigations (FBI) with a special agent, Tom Farmer at the Jacksonville, FL office. Mr. Farmer stated he would have to get permission from the Department of Justice to investigate the IRS. Plaintiff never received any communications or documentation from the FBI with the regards to the Department of Justice.

Plaintiff made several attempts to hire counsel all of which were unsuccessful. Plaintiff was able to hire counsel of record, but during the dispute the attorney was audited by the IRS and counsel said that it would be a conflict of interest should he

continue assisting the plaintiff. Additionally the numerous false claims gave the impression that the plaintiff was a tax cheat causing other legal counsel to want exorbitant retainers some in which were over One Hundred Thousand Dollars ($100,000.00), same as which counsel would charge for a criminal offense.

So being pro se' plaintiff's case is based on the facts and violation and abuse of the United States Constitutional rights.

REASON

This case on behalf of the plaintiff should be heard by this court as it includes difficult constitutional questions before the court and does present issues of importance beyond particular facts and parties involved, which has a great importance and concern to the public.

The United States District Court being misguided by the IRS has so far departed from the accepted and usual judicial proceedings and the Eleventh Circuit Court of Appeals sanctioned the lower court, as to call for an exercise of this court supervisory power.

The lower Court wrongly and abruptly dismissed plaintiff's valid claim, denying plaintiff a day in court to face his accusers. This was the IRS they were allowed to act like tyrants and did not have to prove their false claims nor was I permitted to refute

the IRS claims. The court disregarded pertinent material and fact and refused to allow plaintiff to present evidence to the Court.

The U.S. District Judge, when plaintiff tried to present his case the Judge kept objecting to any material facts presented by the plaintiff, which would cause plaintiff to loose his train of thought and counsel for the defense was not available or permitted for me to meet with defense counsel, to discuss the case.

This has forced plaintiff to pay taxes owned by someone else who took advantage of using plaintiff's social security number. The IRS continued to use as their defense wrongly kept adding interest as to give the appearance plaintiff, who has always been an honest taxpaying citizen to be a tax cheat from illegal sources so much so it interfered in his employment and reputation.

The issue of importance is someone utilized my social security number and the IRS did not take the time or effort to pursue that person but found the easiest route was to wrongfully take monies from the plaintiff.

Plaintiff has been the victim of governmental bureaucracy, and the IRS continues to cover as to conceal the true facts of the case. The feedback to congress to correct the problem of people not having proper identification cards and because previously

they did not require proper identification cards, are now talking about changing the 14th Amendment.

The government protects people in the United States who use other people's social security number and who are illegal and fail to pay taxes, medical cost and receive other free services provided by the government. The real tax payer has to pay for the government's inability to step out of the box and look beyond the desk.

Plaintiff being pro se' and the victim of IRS abuse of power has based my claim on facts and the IRS wrongly allowed to circumvent the court and not allowed to refute their false claims

Defendant wrongly claimed since there was no deficiency notice and the court would not hear plaintiff's valid claims against the IRS. The IRS admitted a deficiency notice was returned to them and plaintiff's earlier request for an administrative Hearing was denied stating it was filed untimely. Plaintiff did not receive the notice on a timely basis and was unaware until receiving a lien on his homestead property, at which time the IRS stated the notice was returned to them. IRS continues to play "hardball" and did deal in bad faith then blocked all efforts for the courts tax review. A deficiency notice was available otherwise the IRS would not be able to levy wages, and file lien on home. The IRS has been selective while the courts have been silent. A major technicality of the usage

of plaintiff's social security number by another person should have been looked into internally or administratively and corrected prior to plaintiff paying taxes on monies he never received.

The deficiency notice was not sent to taxpayers last known address therefore plaintiff was not properly notified and plaintiff was not able to respond timely.

Plaintiff never objected to my 1988 tax year only after being denied the prior three years, 1984, 1986 and 1987 whereas the IRS wrongly extorted monies from the plaintiff when someone else used plaintiff's social security number. Plaintiff took the year 1988 to tax court as plaintiff thought the judges would be interested in the wrongful acts of the IRS. The appeals court side-stepped and were not interested as the IRS or the government had taken over the courts system and allowed the IRS to be selective and deceptive. That was the only reason for the appeal and since they were not interested plaintiff thought the 1988 year should be moot.

There were a lot of material facts that proved the IRS wrongly erred by the intentional wrong acts did over collect on plaintiff social security benefits his only source of income that caused him to sell his home the judge left this open as other issues. The courts should have ordered the IRS to deal with this then report back to the court. The judge was either negligent or bias and wrongly dismissed Plaintiff's valid claim.

The IRS claims were false and therefore plaintiff filed in the judicial court system and to the appeals court and as a citizen the right to be heard. The court system shows no regard to plaintiff's valid claims and has continued to permit the IRS to extort monies from plaintiff.

Plaintiff was looking forward to have my valid claims to being heard by federal court, the judge being Hispanic and presiding over the matter should not have made a difference on the facts. However the judges actions and inactions and his comments exposed his true self there was evidence that plaintiff suffered harm by the wrong acts of the IRS and was mentally abused by all the false claims of the IRS. The judge knowing this belittled the Plaintiff while at the same time complimented counsel for IRS. I believe his actions and words prove the arrogance of power, for dismissing plaintiff's valid claim.

The IRS and their counsel have been deceptive and not fair to deal with I got letters stating wrongly stating that plaintiff's views have been ruled against by our courts and our law of taxes need to be upheld as if I was a tax protester. When putting a spin on things and the IRS were trying to put words into the judge's mouth. The IRS statements in trying avoid their false claims and that the IRS twisted claims to the judges.

Plaintiff's is the victim; his rights were violated not only by the person who took advantage of his social security number but also by plaintiff's own government the IRS. Plaintiff always earned an honest living and worked in a professional environment, taxes were deducted by employers. Special circumstances apply here, the defendant (IRS) the most feared agency of our government did abuse its power, made multiple false claims against plaintiff that question his honesty, destroyed his reputation and his finances do to the years of mistreatment by the IRS caused the plaintiff emotional and mental harm, in addition to plaintiff's problem of keeping focused as I still have good days but many bad days do to my ailing health issues.

The court erred in not considering important facts that were before the court and that plaintiff had problems obtaining proper council, because of being wrongly marked by the IRS. If the court took the time to review the case and have knowledge about the case, which was all before the court, plus the deceptive practices of the IRS that wrongly overwhelmed plaintiff.

Therefore the appeals court's opinion that pro se' litigants are responsible this should not apply in this case.

Additionally the appeals courts decision, rewards deception and more of the false claims, that places

more black marks on plaintiff, which was the intentions of IRS that did fool the judges.

Plaintiff was reaching and pleading to the appeals court this is a valid claim, requesting oral arguments, requesting a rehearing please just look at the facts before the court, that the defendant made false claims that caused irreparable harm. The tax court nor the U.S. District Court never ruled or questioned the IRS about any of their false claims as oral arguments would have been an excellent chance to ask the IRS about their illegal and unreasonable collection actions.

The lower courts gave higher precedence and special treatment to the IRS and disregarded any oral or material arguments presented by plaintiff.

CONCLUSION

The wrongful acts by the IRS and their intentional over burdening of false claims were prejudicial to plaintiff in the lower courts. The lower courts never ruled on the IRS's false claims, which has been the basis of this case. Therefore plaintiff prays that the petition for Writ of Certiorari should be granted.

Respectfully submitted,

Harold B Rotte Date: 10-26-10

Harold B. Rotte

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-11825
Non-Argument Calendar

FILED
U.S. COURT OF
APPEALS
ELEVENTH CIRCUIT
MARCH 1, 2010
JOHN LEY CLERK

D.C. Docket No. 07-14029-CV-JEM

HAROLD B. ROTTE,

Plaintiff-Appellant,

versus

INTERNAL REVENUE SERVICE,
U.S. ATTORNEY GENERAL,
U.S. ATTORNEY'S OFFICE,
UNITED STATES OF AMERICA,

Defendants-Appellees

Appeal En Banc to the United States District Court
For the Southern District of Florida

(March 1, 2010)

Before TJOFLAT, WILSON and ANDERSON, Circuit Judges.

APPENDIX "A"

PER CURIAM:

Harold B. Rotte, proceeding pro se, filed a civil action against the United States for alleged unlawful action by the Internal Revenue Service ("IRS"), in violation of 26 U.S.C. §§ 6511, 6502, 6334, and 6212, and seeking damages under 26 U.S.C. §§ 7432, 7433. Rotte now appeals the district court's orders granting partial summary judgment in favor of the United States, and dismissing for failure to prosecute those claims that survived summary judgment. On appeal, Rotte fails to present any argument regarding the district court's orders, and notes only in passing that "he was not given much time" to explain his case, the court was "negligent" in not considering the totality of his claims, and opposing counsel was "vague and deceptive."

APPENDIX "A"

The remainder of Rotte's brief concerns tax years that were not at issue before the district court, and makes unrelated allegations of fraud and deceit. In his reply brief, Rotte asserts for the first time, without argument, that the district court abused its discretion its discretion is dismissing his claims for failure to prosecute, the court did not give adequate consideration to his claims, and the IRS engaged in unauthorized collection activities in 2004.

"Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." See Trawinski v. United Techs., 313 F.3d 1295, 1297 (11th Cir.202) (quotation omitted). However, "issues not briefed on appeal by a pro se litigant are deemed

abandoned." Timson v. Sampson, 518 F.3d 870, 874 (11th Cir.), cert. denied, 129 S.Ct. 74 (2008). Furthermore, we do not consider arguments raised for the first time in a pro se litigant's reply brief. See Lovett v. Ray, 327 F.3d 1181, 1182-83 (11th Cir.2003).

Because Rotte offers no argument concerning the orders from which he is appealing, he has abandoned all claims on appeal. Furthermore, although he makes brief assertions related to orders in his reply brief.

Upon review of the record and consideration of the parties' briefs, we affirm the district court's grant of partial summary judgment in favor of the

government and the dismissal of Rotte's remaining claims for failure to prosecute.

AFFIRMED.[1]

APPENDIX "A"

---

[1] Rotte's request for oral argument is denied as is his motion to request permission to amend appeal.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-11825

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
May 26, 2010
JOHN LEY
CLERK

HAROLD B. ROTTE,

Plaintiff-Appellant

versus

INTERNAL REVENUE SERVICE,
U.S. ATTORNEY GENERAL,
U.S. ATTORNEY'S OFFICE,
UNITED STATES OF AMERICA,

Defendant's-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND
PETITIONER(S) FOR REHEARING EN BANC

Before: TJOFLAT, WILSON and ANDERSON, Circuit Judges.

APPENDIX "B"

PER CURIAM:

The Petitioner(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

"s/"
UNTIED STATES CIRCUIT JUDGE

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-11825-FF

HAROLD B. ROTE,

Plaintiff-Appellant

versus

INTERNAL REVENUE SERVICE,
U.S. ATTORNEY GENERAL,
U.S. ATTORNEY'S OFFICE,
UNITED STATES OF AMERICA,

Defendant's-Appellees.

FILED
U.S. COURT OF
APPEALS
ELEVENTH
CIRCUIT
JUL 19, 2010
JOHN LEY
CLERK

Appeal from the United States District Court for the
Southern District of Florida

ORDER:

Appellant's Motion to Recall Mandate [and] Motion for Reconsideration of Stay of Mandate, construed simply as a motion to recall the mandate, is DENIED.

APPENDIX "C"

Appellant's proposed motion to stay the mandate was facially meritless, see Fed.R.App.P.41(d)(2)(A), and would have been due to be denied had it been timely filed.

"s/"
UNITED STATES CIRCUIT JUDGE

APPENDIX "C"

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA FT. PIERCE DIVISION

Case Number: 07-14029-CIV-MARTINEZ-LYNCH

HAROLD B. ROTTE,

Plaintiff

vs.

UNITED STATES OF AMERICA,

Defendant.
_____/

FINAL JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and 58,and in accordance with the reasons stated in the Court's Order On Motions for Summary Judgment (D.E. No. 102), judgment is entered in favor of the Defendant United States of America and against Plaintiff Harold B. Rotte as to Count I, and as to the claims in Count II, excepting those claims

relating to the sums in excess allegedly charged with regard to the tax liabilities for Plaintiff's 1988, 1989, and 1991 taxes. This case proceeds to trial with regard to Plaintiff's remaining claim in Count II and with regard to Count III.

DONE in Chambers at Miami, Florida, this 25 day of February, 2009.

"s/"
JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Lynch
All Counsel of Record
Harold B. Rotte, *pro se*

Government
Exhibit
E

APPENDIX "D"

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Ft. Pierce Division

Case Number: 07-14029-CIV-MARTINEZ-LYNCH

HAROLD B. ROTTE,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.
_____/

FINAL ORDER OF DISMISSAL WITH PREJUDICE AND ORDER DENYING ALL PENDING MOTIONS AS MOOT

THIS MATTER is before the Court upon *sua sponte* review of the record. The Court began a bench trial in this case at 11:00 a.m. on Wednesday, March 11, 2009. Plaintiff, Mr. Rotte, was unable to introduce any relevant evidence to support his claim.

Thus, the Court recessed and instructed Mr. Rotte to go through his documents and find evidence that was relevant to the claims remaining in this case. The Court also instructed Mr. Rotte to go over his evidence with opposing counsel. The Court resumed this bench trial three hours later, and Mr. Rotte revealed that he did not discuss his evidence with opposing counsel, he also continued to try to introduce documents relating to claims which are not a part of this case, and he continued to offer his own comments with regard to a government conspiracy against him. The Court repeatedly cautioned Mr. Rotte that he had to introduce evidence and that he had to prove his case. After again allowing Mr. Rotte a little over an hour to present his case and after having found that he had not offered anything that would meet his burden, the Court dismissed his action.

APPENDIX "E"

Accordingly, for the reasons stated herein and for the reasons stated on the record, it is hereby:

ADJUDGED that this action is **DISMISSED with prejudice** for lack of prosecution. It is also:

ADJUDGED that all pending motions in this case are **DENIED AS MOOT**, and this case is **CLOSED.**

DONE AND ORDERED in Chambers at Miami, Florida, this 11 day of March 2009.

"s/"
JOSE E. MARTINEZ
UNTIED STATES DISTRICT JUDGE

Copies provide to:
Magistrate Judge Lynch
All Counsel of Record

APPENDIX "E"